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Supreme Court of the United States

October Term, 1941

No. 745

THE SCHENECTADY UNION PUBLISHING COMPANY,
Petitioner,

against

MARTIN L. SWEENEY

Motion of the American Jewish Committee, the B'nai Brith, the Jewish Labor Committee and the American Jewish Congress for Leave to File Brief as *Amici Curiae*

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MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF *AMICI CURIAE*

May it please the Court:

The undersigned, as counsel for the American Jewish Committee, the B'nai Brith, the Jewish Labor Committee and the American Jewish Congress, respectfully moves this Honorable Court for leave to file a brief in this cause on behalf of said organizations, *amici curiae*:

1. This is a petition for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review a decision of that court rendered by a divided bench (122 F. 2d 288; R. 33-39). The petition was filed herein on November 15, 1941 and in usual course respondent's brief will be filed on December 5, 1941.

2. The organizations above named have requested the consent of both parties to the submission of a brief *amici*. Consent has been granted by counsel for peti-

tioner. At the time of writing, counsel for respondent has failed to indicate whether he intends to grant or refuse consent. As this Court will adjourn after today's session until December 8, 1941, which will be subsequent to the distribution of the petition and responding brief to members of the Court, we are obliged to present this motion today without waiting for further response from counsel for respondent.

3. Although consent of one of the parties to the litigation has not been obtained as provided in Rule 27, subd. 9, of the Rules of this Court, it is respectfully submitted that the present case affords appropriate occasion for the exercise of this Court's discretion and undoubted power to receive the brief *amici*.

4. These organizations are separate entities with nation-wide membership among Jewish people. They are earnestly engaged in the maintenance of the fundamental freedoms guaranteed by the constitution and the protection of minority rights.

5. A divided court below held that charging a public official with anti-Semitism is libelous *per se*. The practical effect of the decision would mean that an utterance which identifies a public official with an unpopular view on a matter of public concern, or which suggests that such unpopular view has influenced action taken by him as a public official, involves presumptive and punitive liability. Such a decision affects a marked restriction upon the ambit of free discourse respecting the activities and opinions of public officials. In this aspect it raises a question going into the essence of the notion of free speech and freedom of the press in a democracy. It also has a peculiar significance in its relation to the expression of opinion by minority groups in the community. For it renders hazardous criticism by the members of such groups and by

the press charging public officials with bias against minorities. The imposition of presumptive liability exercises a realistic restraint upon such utterances. False accusations, of course, should render the publisher liable for actual damages.

6. It is the considered view of the organizations proposing to submit the brief *amici* that this decision represents a novel and unprecedented extension of the frontiers of the law of libel and raises questions of transcendent public importance warranting review by this Court. While the parties to the litigation may be expected adequately to present the particular considerations which in their respective opinions should govern the case, we feel that the issues involved are of such far-reaching importance that the views of organizations whose day-to-day activities touch realistically upon these issues, and which have given years of study to them, will be of assistance to the Court.

Wherefore counsel respectfully urges that this Court grant leave to file a brief on behalf of the *amici curiae*, such brief to be filed not later than December 5, 1941.

LOUIS OTTENBERG,
Counsel for the American Jewish Committee, the B'nai Brith, the Jewish Labor Committee and the American Jewish Congress, amici curiae.